

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TEXARKANA DIVISION**

**ALMA DELIA ATRIZCO-ALVARAEZ
A/N/F OF MINOR, F.M,**

Plaintiff,

v.

**ROONEY TRUCKING, INC. AND
JOHN DOE, AS PERSONAL
REPRESENTATIVE OF THE
ESTATE OF BRADLEY RAY FARMER**
Defendants.

CIVIL ACTION NO._____

**DEFENDANT, ROONEY TRUCKING, INC.'S NOTICE OF REMOVAL AND
REQUEST FOR CONSOLIDATION PURSUANT TO FEDERAL RULE OF
CIVIL PROCEDURE 42 AND LOCAL RULE CV-42**

TO THE HONORABLE COURT:

Pursuant to 28 U.S.C. Sections 1441 and 1446, Defendant, Rooney Trucking, Inc. (“Rooney”), in Cause No. 39626, pending in the 76th Judicial District Court of Titus County, Texas, files this Notice of Removal from that court to the United States District Court for the Eastern District of Texas, Texarkana Division, because the proper parties are diverse in citizenship and the amount in controversy requirement is satisfied.

Further, Rooney requests consolidation of this removed matter with Docket Number: 5:17-CV-00089-RWS, which is currently pending in the United States District Court for the Eastern District of Texas, Texarkana Division, because the cases involve the following: 1) A common Defendant in Rooney; 2) A common accident that forms the basis of all damages claims of all Plaintiffs in each case; 3) Common questions of law; and, 4) Common questions of fact.

In support of this Notice of Removal and Request for Consolidation, Rooney respectfully shows:

I.
FACTUAL BACKGROUND

1.1 On or about May 18, 2017, Plaintiff, Alma Delia Atrizco-Alvarez A/N/F of Minor, F.M. (“Plaintiff”) filed his Original Petition in the matter styled *Alma Delia Atrizco-Alvarez A/N/F of Minor, F.M. v. Rooney Trucking, Inc. and John Doe, A Personal Representative of the Estate of Bradley Ray Farmer*, Cause No. 39626, in the 76th Judicial District Court of Titus County, Texas, in which Plaintiff asserts claims for physical pain and mental anguish injuries, physical impairment, disfigurement, loss of earning capacity, medical care expenses and loss of household services arising from an accident on March 23, 2017 involving a 18-wheeler truck, a school bus and a motor vehicle.

1.2 Rooney files this Notice of Removal within the thirty-day time period required by 28 U.S.C. Section 1446(b). Attached hereto as Exhibit “1” is the Index of State Court Documents. A copy of the Titus County District Clerk’s file for this case is attached as Exhibit “2,” which includes certified copies of all executed process, pleadings and orders, and a certified copy of the docket sheet. Attached hereto as Exhibit “3” is the Designation of Counsel.

II.
BASIS FOR REMOVAL

2.1 Removal is proper based upon diversity of citizenship under 28 U.S.C. §§ 1332(a)(1), 1441(a), and 1446.

A. The Parties Are Of Diverse Citizenship

2.2 Based on the information pled in Plaintiff’s Original Petition, Plaintiff is a citizen of the State of Texas. See Plaintiff’s Original Petition at p.1; ¶ 2.

2.3 Defendant John Doe, as personal representative of the estate of Bradley Ray Farmer had not been appointed and / or identified at the time of the filing of this lawsuit. Indeed, it is unknown if an Estate of Bradley Ray Farmer currently exists. Regardless, Bradley Ray Farmer was a resident of the State of Missouri at the time of his death. Accordingly, the Estate of Bradley Ray Farmer, if / when in existence, should be considered a citizen of the State of Missouri for diversity purposes.

2.4 Rooney is a Missouri corporation with its principal place of business in Missouri, and Rooney is therefore a citizen of the State of Missouri for diversity purposes. Accordingly, complete diversity exists between Plaintiff and Defendants.

B. The Amount in Controversy Exceeds the Jurisdictional Requirements for Subject Matter Jurisdiction

2.5 The amount in controversy requirement for Federal diversity jurisdiction is satisfied in this case as evidenced by Plaintiff's Original Petition in which Plaintiff specifically seeks "monetary relief of over \$1,000,000." See Original Petition at p. 2; ¶ 6. This amount clearly exceeds the jurisdictional requirements for subject matter jurisdiction, and demonstrates that the amount in controversy requirement is satisfied.

C. Requirement for Co-Defendant to Agree to Removal Does Not Apply Because Co-Defendant Has Not Been Served

2.6 When a removal is based on diversity jurisdiction and no other statute authorizing removal applies, all defendants who have been properly joined and served in the suit must join in the notice of removal or consent to the removal. **28 U.S.C. 1446(b)(2)(A)**.

2.7 In this case, Rooney has one named Co-Defendant – John Doe, As Personal Representative of the Estate of Bradley Ray Farmer.

2.8 To date, Rooney's Co-Defendant – John Doe, As Personal Representative of the Estate of Bradley Ray Farmer has not been served.

2.9 Further, Plaintiff has expressly requested that the State District Court from which this matter is being removed NOT issue a citation of service for Rooney's Co-Defendant – John Doe, As Personal Representative of the Estate of Bradley Ray Farmer. *Please See Plaintiff's Original Petition, Page 1, Section I, Paragraph 3.*

2.10 The fact that Rooney's Co-Defendant, John Doe, As Personal Representative of the Estate of Bradley Ray Farmer, remains un-served at this time combined with Plaintiff's demonstrated intent not to pursue service of Rooney's Co-Defendant, John Doe, As Personal Representative of the Estate of Bradley Ray Farmer, renders the requirement for Rooney's Co-Defendant, John Doe, As Personal Representative of the Estate of Bradley Ray Farmer, to join or consent to this removal inapplicable. Accordingly, Rooney's Removal may properly move forward as filed.

III.
THE REMOVAL IS PROCEDURALLY CORRECT

3.1 Rooney files this Notice of Removal within the time period required by 28 U. S. C. Section 1446(b). Attached hereto as Exhibit "A" is the Index of Matters Being Filed.

3.2 Venue is proper in this District and Division under 28 U.S.C. §1446(a) because this District and Division include the county in which the state action has been pending and because a substantial part of the events giving rise to Plaintiff's claim occurred in this District and Division.

3.3 Pursuant to 28 U.S.C. §1446(a), all pleadings, process, orders, and all other filings in the state court action are attached to this Notice.

3.4 Pursuant to 28 U.S.C. §1446(d), promptly after Defendant files this Notice, written notice of the filing will be given to Plaintiff.

3.5 Pursuant to 28 U.S.C. §1446(d), a true and correct copy of this Notice of Removal will be filed with the Clerk of Titus County District Court, promptly after Rooney files this Notice.

**IV.
DOCUMENTS AND EXHIBITS ACCOMPANYING REMOVAL**

4.1 Attached hereto this Notice of Removal as Exhibit “1” is an index of all documents filed in the state court action and a copy of each document. Attached hereto as Exhibit “2” is a certified copy of the Docket Sheet of the case pending in the 76th Judicial District Court of Titus County, Texas.

4.2A Attached hereto as Exhibit “2A” is a certified copy of Plaintiff’s Original Petition.

4.2B Attached hereto as Exhibit “2B” is a certified copy the citation issued to Defendant, Rooney Trucking, Inc.

4.3 Attached hereto as Exhibit “3” is the Designation of Counsel.

**V.
REQUEST FOR CONSOLIDATION**

5.1 Rooney requests consolidation of this removed matter with Docket Number: 5:17-CV-00089-RWS, which is currently pending in the United States District Court for the Eastern District of Texas, Texarkana Division, because the cases involve the following: 1) A common Defendant in Rooney; 2) A common accident that forms the basis of all damages claims of all Plaintiffs in each case; 3) Common questions of law; and, 4) Common questions of fact.

5.2 **A common Defendant in Rooney:** All Plaintiffs in each case allege that Rooney is responsible for their alleged damages and seek recovery from Rooney.

5.3 **A common accident:** All Plaintiffs claim that their alleged damages result from a motor vehicle accident involving a Rooney owned 18-wheeler and a Mount Pleasant Independent School District school bus that occurred in Titus County, Texas on March 23, 2017.

5.4 **Common questions of law:** All Plaintiffs in each case seek to recover under theories of negligence, gross negligence and negligent entrustment. Accordingly, the legal standards that will apply in each case are the same and the interests of judicial economy would be served by consolidation.

5.5 **Common questions of fact:** Because the alleged damages result from the same accident, all questions of fact will be common to both cases. The witnesses will be the same in each case. The forensic evidence will be the same in each case. The physical evidence will largely be the same in each case. Given the tremendous overlap relating to common questions of fact, the interests of judicial economy would be served by consolidation.

5.6 **No Prejudice by Consolidation:** No party would be prejudiced by the consolidation of this removed case with the currently pending case that has the Docket Number of: 5:17-CV-00089-RWS.

VI.
CONCLUSION

6.1 Based upon the foregoing, the exhibits submitted in support of this Removal and other documents filed contemporaneously with this Notice of Removal and fully incorporated herein by reference, Defendant, Rooney Trucking, Inc. hereby removes this case to this court and request that this removed case be consolidated with the currently pending case that has the Docket Number of: 5:17-CV-00089-RWS for trial and determination.

Respectfully submitted,

/s/ Daniel P. Buechler

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ATTORNEYS FOR DEFENDANT
ROONEY TRUCKING, INC.

CERTIFICATE OF SERVICE

This is to certify that on the 24th day of May 2017, a copy of this document was mailed to all counsel of record via electronic notice and/or certified mail, return receipt requested to:

Abraham Carreon
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Tyler, Texas 75702
Email: acarreon@dgley.com

ATTORNEY FOR PLAINTIFF

/s/ Daniel P. Buechler

Daniel P. Buechler